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QUESTION PRESENTED

Whether a state court may, consistently with the Supremacy Clause of the U.S. Constitution, decline to accept jurisdiction over claims based on 42 U.S.C. § 1983.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

No. 89-5383

MARK HOWLETT,
Petitioner,

v.

SCOTT ROSE, *et al.*,
Respondents.

On Writ of Certiorari to
the District Court of Appeal of Florida
Second District

BRIEF OF THE WASHINGTON LEGAL FOUNDATION, FLORIDA ASSOCIATION OF SCHOOL ADMINISTRATORS, AND PINELLAS INFORMED FAMILIES FOR DRUG FREE YOUTH AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

INTEREST OF THE AMICI CURIAE

The Washington Legal Foundation (WLF) is a national nonprofit public interest law and policy center with more than 120,000 members and supporters nationwide. While WLF engages in litigation and the

administrative process in a variety of areas, WLF devotes a substantial amount of time to issues relating to the proper interrelationship between the national and state governments. To this end, WLF has appeared as *amicus curiae* before this Court as well as other state and federal courts in cases involving intergovernmental relations. *See, e.g., Commonwealth of Pennsylvania v. Davenport*, No. 89-156 (decision pending 1990); *United States v. Spallone*, 58 U.S.L.W. 4103 (Jan. 10, 1990).

The Florida Association of School Administrators (FASA) is a voluntary organization based in Tallahassee, composed of over 4,100 superintendents, principals, deans, and other officials of the Florida public schools. FASA seeks to advance the cause of education in Florida and to strengthen the administrator's role as an educational leader. FASA is primarily concerned in this case with the potential of an explosion in the number of groundless suits being filed in the Florida state courts against school administrators conscientiously performing their complex and difficult duties.

The Pinellas Informed Families for Drug Free Youth is a coalition of parents, students, teachers, law enforcement officers, senior citizens, medical professionals, and other concerned citizens of Pinellas County, Florida. Pinellas Informed Families supports school officials in their fight against drug and alcohol abuse among their students and opposes the use of the courts as a tool of harassment against educators.

The principal issue raised in this case involves the extent to which Florida state courts may determine their own jurisdiction. *Amici* believe that within our federal system of government state courts ought to be permitted to control their own jurisdiction to the maximum extent that is consistent with the U.S. Constitution. *Amici*

believe that their interest in unfettered state court systems may not be fully shared by either of the parties, and the State of Florida (which presumably would share that interest) is not a party in this case. Since *amici*'s interest in the case may not be shared by the parties, *amici* believe that they can assist the Court by providing a perspective that is distinct from that of either party.

Amici submit this brief on behalf of Respondents with the written consent of both parties.

STATEMENT OF THE CASE

The trial court below dismissed Petitioner Mark Howlett's lawsuit on the basis of the pleadings. Accordingly, the allegations contained in Mr. Howlett's complaint should be accepted as true, to the extent they have any relevance to the matters at issue before this Court.

Mr. Howlett in 1986 was a student at St. Petersburg High School in Pinellas County, Florida. On October 9, 1986, Mr. Howlett and others parked their cars at school in such a manner that a food delivery truck was unable to exit from school grounds. The truck driver sought the assistance of Thomas Petit, an assistant principal at the school.

Mr. Petit thereupon entered Mr. Howlett's car for the purpose of ascertaining its ownership. While inside the car, Mr. Petit noticed bottles containing an alcoholic substance. Mr. Howlett later admitted to Mr. Petit that he had placed the bottles in the car. Mr. Petit immediately suspended Mr. Howlett from school for five days for violating a rule against possessing alcoholic beverages on school property.

Soon thereafter, Mr. Howlett filed suit in the Circuit Court for Pinellas County, Florida against the school board, Mr. Petit, and two other individuals -- Scott Rose (the superintendent of county schools) and William Grey (the school principal). The suit alleged that the defendants had violated various of Mr. Howlett's rights under the state and federal constitutions. Count I alleged that Mr. Howlett's right to be free from unreasonable searches and seizures was violated when Mr. Petit entered his car. Count II alleged that Mr. Howlett's suspension violated his rights to due process of law in that the evidence against Mr. Howlett was not substantial and in that the school rule under which he was suspended was impermissibly vague. Count III alleged that Mr. Howlett's suspension violated his procedural due process rights in that he was not afforded an adequate hearing prior to his suspension. The suit sought compensatory and punitive damages as well as an injunction against future violations of constitutional rights by school officials.

The circuit court granted Respondents' motion to dismiss, on the ground that suit was barred by the common law doctrine of sovereign immunity. The district court of appeal affirmed in February 1989. *Howlett v. Rose*, 537 So.2d 706 (Fla. Dist. Ct. App. 1989). The district court of appeal made clear that it was ruling against Mr. Howlett not because his suit failed to state a cause of action but because the Florida courts do not have jurisdiction to hear suits of the type filed by Mr. Howlett. *Id.* at 708. The Florida Supreme Court issued an unpublished order in May 1989 declining to review the case. This Court granted a petition for a writ of *certiorari* on November 13, 1989.

SUMMARY OF ARGUMENT

The Florida courts dismissed Mr. Howlett's suit on the ground that they do not have jurisdiction to hear § 1983 claims of the type raised by the suit. This Court has never addressed the issue of whether a State may decline to exercise jurisdiction over a federal § 1983 claim. An answer to that question requires an examination of the language of § 1983 and its legislative history. That examination reveals that Congress never intended to require states to exercise jurisdiction over § 1983 claims. To the contrary, Congress contemplated that a § 1983 action was a uniquely federal cause of action that would be brought almost exclusively in the federal courts. Congress' 1980 amendment to 28 U.S.C. § 1331 confirms that Congress never intended to require state courts to exercise jurisdiction over § 1983 actions.

Cases cited by Petitioner are distinguishable. The Court has consistently held that once a state court has accepted jurisdiction over a federal-law cause of action, it may not apply state procedural rules to defeat the cause of action. However, those cases have no application in this case, in which the Florida courts have declined altogether to exercise jurisdiction.

Florida does not discriminate in any way against federal-law causes of action. It applies the same jurisdictional rules to cases brought pursuant to the state constitution as it does to case brought pursuant to § 1983. Florida's action in limiting its jurisdiction is fully justified by its desire to relieve congestion in its courts.

ARGUMENT

I. THE STATE COURTS' DECISION WAS BASED ON A REFUSAL TO ASSERT JURISDICTION, NOT ON FAILURE TO STATE A CAUSE OF ACTION

Amici do not contend that Florida courts are entitled to exercise jurisdiction over suits under 42 U.S.C. § 1983 and then dismiss them on the merits on the basis of some state rule of decision that conflicts with the analogous federal rule of decision. This Court's decisions in *Felder v. Casey*, 108 S.Ct. 2302 (1988), and *Martinez v. California*, 444 U.S. 277 (1980), appear to preclude such treatment of federal causes of action in the state courts.

However, a close reading of the decision of the district court of appeal makes clear that the Florida courts did not act in this case in the manner proscribed by *Felder* and *Martinez*. While the decision may not have been a model of clarity, the district court of appeal did make clear the primary basis for its decision: that the Florida courts simply refuse to exercise jurisdiction over the type of suits brought by Mr. Howlett. Indeed, the district court of appeal distinguished *Martinez* on precisely that basis: it held that *Martinez* does not apply to cases where a state is exercising "immunity from the use of its courts" and has not "opened its own courts for federal actions against the state." *Howlett v. Rose, supra*, 537 So.2d at 708. The quoted language indicates that the district court of appeal held that the circuit court lacked jurisdiction to hear Mr. Howlett's lawsuit, not that his claims failed to state a cause of action.

The precise contours of the Florida courts' self-imposed limitation on their jurisdiction is not entirely clear from decisions of the various Florida appellate courts. It is not clear, for example, whether the state courts have ruled that they lack jurisdiction over all § 1983 lawsuits or whether (as seems to be the case) they will still exercise jurisdiction over § 1983 lawsuits brought against individuals sued in their individual capacities.[1] What is clear is that the Florida courts' rulings in this case were based on an absence of jurisdiction and were not rulings on the merits of the complaint.

If the Court has any doubts as to the basis of the decision below, its proper course of action is to remand this case to the state courts for further explanation. *See Employment Division of Human Resources of Oregon v. Smith*, 108 S.Ct. 1444 (1987). Failing that, the Court should accept at face value the ruling of the district court of appeal that Florida courts do not accept jurisdiction over cases of the type at issue here.

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[1] If, as *amici* suspect, Florida courts exercise jurisdiction over § 1983 suits brought against government officials in their individual capacities, then the circuit court must have considered that Respondents Rose, Grey, and Petit were being sued in their official capacities only. Petitioner appears to argue that his complaint should be read as a suit against Messrs. Rose, Grey, and Petit in their individual capacities. Petitioner's Brief at 22. However, the issue of whether the circuit court erred in categorizing the complaint as it applied to the individual defendants is not properly before the Court. Petitioner did not raise that issue in the courts below. This Court will not decide issues -- even issues raising federal constitutional questions -- raised for the first time on review of a state court decision. *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969).

II. THIS CASE MUST BE DECIDED ON THE BASIS OF CONGRESS' INTENT WHEN IT ADOPTED 42 U.S.C. § 1983

This case raises an issue of first impression in this Court: whether a state court may decline to exercise jurisdiction over a claim brought under 42 U.S.C. § 1983. The Court stated in *Martinez* that the Court has never addressed or decided that issue. *Martinez*, *supra*, 444 U.S. at 283 n.7.

In addressing that issue, it is important to keep in mind the essential sovereignty of all 50 States within our federal system of government. States are to a large extent free to organize their local judiciary as they see fit. "[U]nder our federal system, the States possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy Clause." *Tafflin v. Levitt*, 58 U.S.L.W. 4157, 4158 (Jan. 23, 1990).

Amici acknowledge that the U.S. government has the power under the Supremacy Clause to require state courts to exercise jurisdiction over federal-law causes of action. Nonetheless, a recognition of State sovereignty requires a conclusion that state courts are free to place limitations on their own jurisdiction unless those limitations conflict with some statutory policy established by Congress -- in which event the Supremacy Clause voids those limitations. Accordingly, in deciding this case, the Court should turn to the language and legislative history of § 1983 and should not rely on amorphous presumptions regarding state-court jurisdiction.

Section 1983, like most federal statutes, is silent regarding its enforceability in state courts. This Court has held that concurrent state-court jurisdiction over

federal-law causes of action is to be presumed in the absence of an express Congressional intent to the contrary. *Tafflin v. Levitt*, *supra*, 58 U.S.L.W. at 4158; *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 477-78 (1981). But to presume that Congress intended to *permit* a state court to exercise jurisdiction over a federal-law cause of action is a far cry from presuming that Congress intended to *require* a state court to do so. As the Court made clear in *Gulf Offshore*, "Federal law confers rights binding in state courts, *the subject-matter jurisdiction of which is governed in the first instance by state law.*" *Id.* at 478 (emphasis added).

The sovereign rights of a state judiciary to establish its own jurisdiction should not be overruled on the basis of the Supremacy Clause absent some clear indication from Congress that it intends they be overruled. As set forth below, there is no such clear indication in the legislative history of § 1983; rather, there are numerous indications that Congress, while intending to permit state courts to exercise jurisdiction over § 1983 lawsuits, did not intend to require them to do so.

III. IN ADOPTING § 1983, CONGRESS DID NOT INTEND TO REQUIRE STATES TO EXERCISE JURISDICTION OVER § 1983 ACTIONS

A. § 1983 Was Adopted Against a Backdrop of Congressional Distrust of State Courts.

What is now codified as 42 U.S.C. § 1983 had its origins in § 1 of the Civil Rights Act of 1871, 17 Stat.

13.[2] The Civil Rights Act of 1871 was adopted against a backdrop of Congressional distrust of state courts, particularly state courts in the South. Numerous members of Congress complained that while laws in the Southern States were adequate to protect civil rights, state courts were refusing to enforce those rights on behalf of blacks and Northern sympathizers. *See District of Columbia v. Carter*, 409 U.S. 418, 426-27 (1973). The Civil Rights Act of 1871 "was designed primarily in response to the unwillingness or inability of the state governments to enforce their own laws against those violating the civil rights of others." *Id.* at 426.

Of particular note was the inclusion in § 1 of the Civil Rights Act of 1871 of a provision conferring jurisdiction on the federal courts over the § 1983 right of action.[3] It should be borne in mind that in 1871 there was no general federal question jurisdiction, which was not adopted until 1875. *See* Act of March 3, 1875, § 1, 18 Stat. 470, now codified as 28 U.S.C. § 1331. Thus, § 1983 actions could not have been brought in federal courts absent the jurisdictional provision in § 1 of the Civil Rights Act of 1871. The Court has inter-

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[2] 42 U.S.C. § 1983 now provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

[3] The jurisdictional provision of § 1 of the Civil Rights Act of 1871 is now codified as 28 U.S.C. § 1343(3).

preted the inclusion of the jurisdictional provision in the Act as an indication that Congress wanted § 1983 actions to be brought in the federal courts. *See Carter*, *supra*, 409 U.S. at 428-29 ("[section 1983] may be viewed as an effort 'to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and claims of citizens to the rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies'")(*quoting Monroe v. Pape*, 365 U.S. 167, 180 (1961)). *See also Will v. Michigan Department of State Police*, 109 S.Ct. 2304, 2309 (1989)("[a]lthough Congress did not establish federal courts as the exclusive forum to remedy these deprivations, it is plain that 'Congress assigned to the federal courts a paramount role' in this endeavor")(*quoting Patsy v. Board of Regents of Florida*, 457 U.S. 496, 503 (1982)).

The circumstances surrounding adoption of the Civil Rights Act of 1871 make it highly doubtful that Congress intended to *require* state courts to hear § 1983 actions. While Congress apparently was willing to permit state courts to exercise concurrent jurisdiction over § 1983 actions, it is inconceivable that Congress intended to require them to do so in light of Congress' total mistrust of their ability to dispense justice. At best, it might be claimed that Congress simply failed to focus on whether to require state courts to exercise jurisdiction over § 1983 actions. Such a claim cannot form the basis for a finding that Congress intended to overrule the right of sovereign States to establish the jurisdiction of their courts as they see fit.

B. When Congress Intended to Require State-Court Jurisdiction Over Federal Causes of Action, It Made Its Intention Clear.

A finding that Congress *sub silentio* invoked its Supremacy Clause power to require state courts to hear § 1983 actions would be particularly inappropriate in light of Congress' established practice in the 18th and 19th centuries to state explicitly when state courts were required to hear federal-law causes of action. For example, in *Testa v. Katt*, 330 U.S. 386, 390 (1947), the Court cited five 18th-century laws (that remained in effect well into the 19th century) that explicitly provided that jurisdiction lay in the state courts to enforce rights created by the laws.[4]

The federal statutes cited in *Testa* indicate that Congress knew how to say so explicitly when it intended to require state courts to hear federal-law causes of action. Congress' failure to make such a statement when it adopted the Civil Rights Act of 1871 indicates that it did not intend to overrule the rights of the sovereign states to establish the limits of state-court jurisdiction.

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[4] The five laws were the Judiciary Act of 1789, 1 Stat. 73, 77 (all suits by aliens for torts committed in violation of federal laws and treaties; all suits by the United States); 1 Stat. 376, 378 (1794)(fines, forfeitures, and penalties for violation of the License Tax on Wines and Spirits); 1 Stat. 373, 375 (1794)(the Carriage Act Tax); 1 Stat. 452 (penalty for purchasing guns from Indians); and 1 Stat. 733, 740 (1799)(criminal and civil actions for violations of the postal laws). Congress vested sole jurisdiction to enforce these federal laws in the state courts; federal courts were denied jurisdiction.

C. Permitting State Courts to Decline to Hear § 1983 Actions Would not Deprive Anyone of a Forum in Which to Vindicate His Rights.

Amici acknowledge that there should be a general presumption that rights created by the U.S. Constitution or by federal law are to be enforceable in some forum. Thus, if Congress adopts federal court jurisdictional requirements that do not permit federal rights to be enforced in the federal courts, one can safely assume -- in the absence of evidence to the contrary -- that Congress intended to require state courts to exercise jurisdiction over suits brought to enforce those federal rights. This Court has gone to great lengths to ensure that all federal rights are enforceable in some forum. Thus, in *General Oil Co. v. Crain*, 209 U.S. 211 (1908), the Court stated that it had jurisdiction to review a Tennessee state court's refusal to exercise jurisdiction over a Commerce Clause challenge to the constitutionality of a state tax being imposed on the plaintiff. Noting that the plaintiff was barred by the Eleventh Amendment from raising his Commerce Clause challenge in the federal courts, the Court reasoned that unless it asserted jurisdiction, "an easy way is open to prevent the enforcement of the Constitution, and the Fourteenth Amendment, which is directed at state action, could be nullified as to much of its operation." *Id.* at 226.

There has never been any danger that § 1983 rights could not be vindicated in some forum, because the federal courts have had jurisdiction to hear § 1983 actions -- regardless of the dollar amount in controversy -- ever since the enactment of § 1983 in 1871. Thus, Mr. Howlett was free at all times -- both before and after the circuit court's dismissal on jurisdictional grounds -- to file his § 1983 action in federal court.

Given Congress' creation of federal court jurisdiction for all § 1983 actions, there is no basis for presuming that Congress intended to *require* state courts to provide an alternative forum for such actions; certainly, federal rights could be fully vindicated without the need for a state-court forum.

D. Congress' 1980 Amendment to 28 U.S.C. § 1331 Is Further Evidence That Congress Did Not Intend To Require States To Hear § 1983 Cases.

In 1980, Congress amended 28 U.S.C. § 1331, the statute conferring general federal question jurisdiction on the federal courts, in order to remove the minimum jurisdictional amount requirement.[5] Federal Question Jurisdictional Amendments Act of 1980, P.L. 96-486, 94 Stat. 2370 (1980). The legislative history of that amendment provides further evidence that Congress did not intend to require state courts to exercise jurisdiction over § 1983 actions.

The House Judiciary Committee, in explaining the reasons for eliminating the jurisdictional amount requirement, stated:

> It resolves the anomalous situation faced by persons who, although their Federal rights have been violated, are barred from a Federal forum solely because they have not suffered a sufficient economic injury. It represents sound principles of federalism by mandating that the Federal courts should bear the responsibility of deciding all questions of Federal law. *At the same time, it demonstrates an increased respect for the States by providing that federal claims should not be forced on the overburdened State court systems.*

H. Rep. No. 96-1461, 96th Cong., 2d Sess. (emphasis supplied). Congressional intent could not be more clear: Congress did not wish to force state courts to hear federal claims, and thus it eliminated the jurisdictional amount requirement from the federal court's federal question jurisdiction. It is difficult to imagine that a Congress concerned that it not overburden the state court systems would nonetheless invoke its powers under the Supremacy Clause to abrogate the States' sovereignty over their own court systems and require state courts to hear § 1983 claims.

IV. CASES CITED BY PETITIONER ARE DISTINGUISHABLE

In contending that States should not be free to decline jurisdiction over § 1983 actions, Petitioner relies principally on four decisions from this Court: *Felder*, *Martinez*, *Testa*, and *Mondou v. New York, N.H. & H. R.R.*, 223 U.S. 1 (1912). Each of those cases is distinguishable from the case now before the Court. Each involved a state court that accepted jurisdiction over a federal claim; the Court ruled in each case that once a state court has accepted jurisdiction over a federal claim, it may not apply state procedural rules to defeat the federal claim.

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[5] When federal court jurisdiction over federal questions was established in 1875, jurisdiction was limited to cases in which the amount in controversy was greater than $500. That jurisdictional amount was increased to $2,000 in 1887, $3,000 in 1911, and $10,000 in 1958 before being eliminated in 1980. *See Carter*, *supra*, 409 U.S. at 427 n.20.

In this case, the Florida courts did not apply any state procedural rules to defeat a federal claim; they simply declined to exercise jurisdiction over the claim. The Court was concerned in *Felder* that permitting States to apply their procedural rules to federal claims brought in state court would lead to "different outcomes in § 1983 litigation based solely on whether the claim is asserted in state or federal court." *Felder*, *supra*, 108 S.Ct. at 2307. The refusal of Florida's courts to accept jurisdiction over certain federal claims creates no such danger. If a plaintiff mistakenly files a § 1983 claim against a local governmental body in state court in Florida and ends up having his complaint dismissed, he is free to re-file in federal court since a dismissal for lack of jurisdiction has no preclusive effect on future lawsuits. In contrast, the Wisconsin state court's dismissal in *Felder* was a dismissal on the merits and would have barred a subsequent suit on the same grounds in federal court.

Moreover, each of the decisions relied on by Petitioner disclaims any intention to dictate the jurisdiction of state courts. *See*, *e.g.*, *Mondou*, *supra*, 223 U.S. at 56 ("there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of the state courts"). Accordingly, the cases lend little support to Petitioner's thesis that Congress intended to require state courts to accept jurisdiction in § 1983 actions.

V. FLORIDA COURTS HAVE A LEGITIMATE INTEREST IN LIMITING THEIR JURISDICTION IN THE MANNER CHOSEN

Courts at both the federal and state levels have become increasingly clogged in recent years as the

number of new suits filed annually continues to skyrocket. A primary cause of court congestion has been the increasing number of lawsuits filed pursuant to § 1983. *See*, *e.g.*, *Parratt v. Taylor*, 451 U.S. 527, 554 n.13 (1981)(POWELL, J., concurring in result); *Patsy v. Board of Regents of State of Florida*, *supra*, 457 U.S. at 534 (POWELL, J., dissenting).

Florida has a legitimate interest in attempting to relieve congestion in its courts by declining to exercise jurisdiction in some or all § 1983 cases. As the legislative history of the Federal Question Jurisdictional Amendments Act of 1980 make clear (*see* page 14, *supra*), Congress shared Florida's concern that state courts not become congested with federal-law causes of action and therefore took steps to increase the subject matter jurisdiction of the federal courts. Florida courts cannot be faulted for taking steps to relieve court congestion by declining to hear certain federal claims, particularly when Congress has recognized that congestion of state courts with federal causes of action is a legitimate concern.

Studies have shown that suits alleging § 1983 causes of action are more likely to be frivolous than are other suits. For example, a recent study showed that plaintiffs in civil rights lawsuits are sanctioned under Rule 11 of the Federal Rules of Civil Procedure for filing frivolous lawsuits at a rate significantly higher than other litigants. *See* Vairo, *Rule 11: A Critical Analysis*, 118 F.R.D. 189, 200 (1988). Mr. Howlett's suit is a prime example of a frivolous § 1983 lawsuit. His claim that the search of his car violated his Fourth Amendment rights has virtually no chance of success in view of this Court's ruling in *New Jersey v. T.L.O.*, 469 U.S. 325 (1985). Mr. Howlett's due process claims are lacking in any merit, even if one accepts the facts as

alleged by Mr. Howlett. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975); *Lamb v. Panhandle Community Unit School District No. 2*, 826 F.2d 526 (7th Cir. 1987). The Florida courts are acting well within their rights in determining that they wish to avoid a crush of frivolous lawsuits by declining to accept jurisdiction over certain federal-law causes of action.

VI. FLORIDA COURTS ARE NOT IMPROPERLY DISCRIMINATING AGAINST FEDERAL CAUSES OF ACTION

Petitioner argues in the alternative that even if state courts are permitted under some circumstances to refuse to accept jurisdiction over federal causes of action, Florida has acted improperly in this case because it has in some way improperly "discriminated" against a federal cause of action. Petitioner notes, for example, that while Florida and its local governmental units have waived their sovereign immunity (at least to a degree) from common law tort suits, they have not done so for § 1983 actions. Petitioner's Brief at 24.

Petitioner's argument is without merit. The state-law analogue to a § 1983 suit is a suit for violation of rights under the Florida Constitution, not a common law tort action.[6] Florida does *not* permit suits in the state courts against the state and local governments alleging violation of rights under the state constitution. Indeed, Mr. Howlett raised such claims in this case, and the state courts declined to exercise jurisdiction over those

[6] *See Will v. Michigan Dept. of State Police, supra*, 109 S.Ct. at 2320 (BRENNAN, J., dissenting)("there is a substantial question" regarding whether Michigan can discriminate between suits based on the state constitution and suits based on the U.S. Constitution "only on the ground that one was a state suit and the other a federal one").

claims. Petitioner's "discrimination" argument appears to boil down to a claim that if a state court grants jurisdiction over *any* state-law claims against a particular class of defendants, then it must grant unlimited jurisdiction to all conceivable § 1983 claims against that class of defendants. Nothing in the decisions of this Court supports that argument.

Congress has always imposed restrictions on federal court jurisdiction in order to control the number of cases filed in the federal courts. For example, federal question jurisdiction in the federal courts was subject to a jurisdictional amount requirement until 1980, and diversity jurisdiction in the federal courts is still subject to a $50,000 jurisdictional amount. If Congress has approved measures designed to relieve court congestion by limiting federal court jurisdiction, there is no reason to believe that Congress intended to forbid the States from doing likewise. This Court has upheld similar jurisdictional amount requirements imposed within state court systems. *See Callen v. Bransford*, 139 U.S. 197 (1891). Florida's attempt to relieve congestion in its state courts by declining to accept jurisdiction over certain federal-law causes of action should be similarly upheld.

CONCLUSION

Amici respectfully request that the decision of the Florida district court of appeal be affirmed.

Respectfully submitted,

DANIEL J. POPEO
RICHARD A. SAMP
(Counsel of Record)
WASHINGTON LEGAL
FOUNDATION
1705 N Street, N.W.
Washington, DC 20036
(202) 857-0240

Dated: February 8, 1990